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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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07/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/630,502	Applicant(s) DAVENPORT ET AL.	
	Examiner D. L. Jones	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 4/23/08 wherein claims 19 and 21 were amended.

Note: Claims 1-27 are pending.

RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS

2. The Applicant's arguments and/or amendment filed 4/23/08 to the rejection of claims 19-27 made by the Examiner under 35 USC 103 have been fully considered and deemed non-persuasive for reasons of record in the office action mailed 1/24/08 and those set forth below.

103 Rejection

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of claims 19-27 under 35 USC 103(a) as being unpatentable over De Boer et al (JP 02227051) in view of Mattson (US Patent No. 4,034,083) is MAINTAINED for reasons of record in the office action mailed 1/24/08 and those set forth below.

Applicant's arguments may be summarized as follows. (1) The claims of the instant invention are directed to nutritionally balanced compositions for mammals such as cats and rabbits which may be kibble compositions, high moisture compositions, and semi-dry compositions. (2) Neither one of the cited prior art references discloses that their compositions would be useful for mammals such as cats and rabbits. (3) Neither

cited prior art documents disclose the use of the composition for increasing fecal hair excretion or treating a hairball. (4) There is no disclosure in the prior art references that the composition comprising the polyol fatty acid polyesters would have an reasonable expectation of success in treating a hairball or increasing fecal hair excretion.

First, Applicant is reminded that claims 19-27 are product, not method, claims. Secondly, it is noted that the composition/product of the prior art is the same as that being claimed by Applicant. Although the cited prior art does not disclose the particular use, the composition/product would be capable of having the same use as Applicant's invention since a composition/product and its properties are inseparable. Thus, Applicant's composition/product, like the cited prior art, would be 'capable of' performing the same function (e.g., increasing fecal hair excretion or treating a hairball).

In regards to Applicant's comments that the amended claims are directed toward a nutritionally balanced composition, it is noted that the cited prior art documents also disclose that their compositions are nutritional. For example, in column 7, lines 37-46 (see also column 9, lines 49-52), it is disclosed that the compositions may be vitamin fortified and optionally, comprise any desired non-interfering pharmaceutical carrier.

In regards to the compositions being useful for mammals such as cats and rabbits, Applicant's attention is directed to Mattson (see abstract; columns 2-3, bridging paragraph) which discloses that the composition may be used for animals, especially, humans. In the English translation of De Boer et al, pages 3-4, bridging paragraph, it is disclosed that the polyol fatty acid polyester compositions may be used in medical applications and may be administered to humans and rats, which were used as the test

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animals (page 14, Example 1). Thus, a skilled artisan would recognize that animals as stated in Mattson include cats and rabbits. In addition, it would be obvious to one of ordinary skill in the art that if De Boer et al disclose that their composition may be administered to humans and rats which are both mammals and the fact that rats were selected as the animal models, then administering the composition to other mammals such as cats and rabbits, would be obvious since they are all mammals and the reference is not limited to administering the composition to a specific group of mammals.

In regards to the compositions being kibble compositions, high moisture compositions and semi-dry compositions, it is noted that the cited prior art documents disclose various food products that encompass kibble like, high moisture, and semi-dry compositions. Also, it is noted that Mattson discloses that the composition form may include those which are easily ingested and/or those that provide accurate unit dosages in a convenient form (column 10, lines 3-11). Furthermore, the skilled artisan would recognized that while a change in form may render an article new in commerce, in order for it to be patentable, it must be more efficacious or possess new properties by a combination with other ingredients and not merely a change of form which has the advantages which one skilled in the art would expect from the change (*Glue Co. v. Upton* (USSC 1878) 97 US 3, 24 L Ed. 985).

Thus, based on the reasoning above and those set forth in the office action mailed 1/24/08, the rejection is deemed proper.

WITHDRAWN CLAIMS

3. Claims 1-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. Jones/
Primary Examiner
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June 26, 2008